Immigration Issues in Child Welfare

June 23, 2017
Information to Participate

- Call-in number is 1 (415) 655-0060 and access code is 471-031-356
- Presentation materials and audio will be posted at [www.jbaforyouth.org](http://www.jbaforyouth.org) and [www.ilrc.org](http://www.ilrc.org)
- To submit live questions, click on the “Questions” panel, type your question, and click “Send”
Moderator and Panelists

• Amy Lemley, John Burton Advocates for Youth

• Angie Junck, Supervising Attorney

• Rachel Prandini, Immigrant Youth Project Attorney
Topics for Today

- Context & Background for Immigrant Families
- Protections for Immigrant Families in Child Welfare
- Immigration Relief Options for Children & Families
I. Context & Background
Executive Orders on Immigration
President Trump has issued multiple immigration-related Executive Orders.

Many lawsuits have been filed challenging various provisions of Executive Orders.

Many provisions require funding which would need to be approved by Congress, e.g. border wall, addt’l ICE officers.
New Enforcement Priorities

- Priorities are so broad that any undocumented person is at risk.

- Individuals who have had any contact with law enforcement, including youth in the juvenile justice system, may be at particular risk.

Creates a culture of fear in the immigrant community.
New Enforcement Priorities

Huge impact on children and families

• Living in fear of parental deportation
• Afraid to go to school, access benefits, report crime, etc.
• More than 5M children in the U.S. currently live with at least one undocumented parent, 4.1M of whom are U.S.-born citizens
Impact of Immigration Enforcement on Children

- Arrests, deportation, detention parents may leave children behind
- Trauma of family separation
- Lower income, families become one-parent families
- Children suffer social isolation / stigma
- U.S. born (citizen) children may need to leave with parents
- Whole families may be detained and deported to situations of increased risk and poverty
Aggressive defense of our immigrant communities!

Budget Trailer: includes $45 million in funding to support legal defense of immigrants
- funding for immigration relief services, including naturalization, deportation defense, DACA, and post-conviction relief
- one-time allotment of funding to provide resources to public defender offices to effectively represent noncitizen defendants
- Budget also includes moratorium on immigration detention contract expansion & creation of state detention facility oversight
California’s Response: Pending Legislation

• California Values Act (SB 54 De Leon): would ensure California is not complicit in the business of deportation, including limiting cooperation between local and state law enforcement and federal immigration authorities

• Dignity not Detention Act (SB 29 Lara): would keep local governments out of the business of contracting with private prison corporations for private immigration detention; would require all other detention facilities to follow the National Detention Standards
Supporting Immigrant Families

Encourage immigrant children & families to:

• Talk to an immigration services provider about immigration options
  • If an green card holder, naturalize!
  • If undocumented, get screened for potential eligibility for immigration relief
Supporting Immigrant Families

Encourage immigrant children & families to:

• Put a **family preparedness plan** in place
  • Figure out who can pick up children if parents are unable to
  • Keep a file with important documents and emergency contact information
  • Caregiver’s Authorization Affidavit
• Consider nominating a Guardian for child(ren)
Supporting Immigrant Families

• Encourage immigrant children & families to:
  • Know their rights and practice asserting them!
  • Figure out which documents they should and should not carry with them
  • Continue to avoid negative interaction with law enforcement (something like a DUI or drug conviction can have irreversible negative immigration consequences)
II. Protections for Immigrant Families in Child Welfare
SB 1064: The Reuniting Immigrant Families Act

• On Oct 1, 2012, Governor Brown signed SB 1064 into law, making it the first bill in the country to address the barriers to family reunification for detained and deported immigrant families
SB 1064: Background

• Between July 1, 2010 and Sept. 31, 2012, nearly 23 percent of all deportations—or, 204,810 deportations—were issued for parents with U.S. citizen children

• In 2013, ICE reported 72,410 deportations of parents with U.S. citizen children

• As of 2011, there were at least 5,100 children currently living in foster care as a result of detained or deported parents
ICE enforcement separates families, and children may end up in the child welfare system.

ICE detention limits parental participation in the reunification process.

Immigration proceedings can result in parents’ removal (though not always).
Challenges facing immigrant parents include:

- trauma exposure for children at time of arrest;
- children coming home to empty homes;
- difficulty in locating and staying in communication during detention;
- logistical challenges at deportation;
- immigration judges often have no discretion to consider the adverse impact of parental deportation on U.S. citizen children.
Five Areas of Focus of SB 1064

1. An adult’s undocumented status alone cannot bar her from placement consideration.

2. Workers are required to make & document reasonable efforts to aid detained & deported parents in receiving reunification services.

3. Courts have special case continuance options that take immigration issues into account.
Five Areas of Focus of SB 1064

4. Encourages agencies to enter into MOUs with foreign consulates to help facilitate information-sharing and cooperation regarding children in the child welfare system.

5. Encourages efforts to assist undocumented children in DSS custody obtain immigration relief.
ICE Parental Interests Directive
Issues detained parents have faced:

• Lack of notice of dependency court hearings
• Inability to attend dependency court hearings
• Inability to speak with counsel
  • Or no counsel appointed because cannot attend hearings
• Inability to visit with children or comply with court-ordered plans given lack of services
Issues detained parents have faced:

- No right to government-appointed counsel in adversarial proceedings
- Lengthy proceedings (months or years), especially if appeal is needed
- Detention with no date set for release
- Immigration judges have very limited ability to consider children’s interests
The two courts operate on different timelines
Not all parents will be removed (deported), although that is often presumed
  Detention ≠ deportation
Removed parents may lose parental rights because of procedural hurdles
ICE Parental Interests Directive

- ICE instituted a Parental Interests Directive August 23, 2013

- Policy 11064.1, “Facilitating Parental Interests in the Course of Civil Immigration Enforcement Activities”

- Currently being revised by Trump Administration
ICE Parental Interests Directive

• Treat parents differently if responsible for the care of minor children

• Consider exercising ICE prosecutorial discretion including, for example:
  • Dropping the ICE detainer
  • Withholding initiation of deportation proceedings
  • Terminating the deportation case or having it administratively closed
Aid detained parents in involvement with state courts.

- Whenever possible, detain parents close to children & near court proceedings.
- Facilitate parental attendance at hearings unless undue logistical, safety, or security concerns (or use alternative means).
- Facilitate visitation when required for reunification.
Deport in a way that permits parents to make arrangements for their children, including:

- Coordination of the child’s travel
- Providing time to obtain a legal guardian for a child remaining in the U.S.
- Coordinate a parent’s need to access attorney, consulate, court, and family members before deportation
- Help the parent make guardianship arrangements, file child passport applications, and arrange child’s travel

ICE Parental Interests Directive
ICE Parental Interests Directive

Locate and contact parents in ICE custody

Make certain parents receive notice of hearings and a reunification plan, scheduling letter, or other document stating visitation requirement

• Ensure parents have evidence of hearings to request physical transportation; arrange phone or video participation if ICE will not transport.

• Ensure parents have evidence of the TPR hearing and that physical presence is required.

• Notification and involvement of foreign consulate can help ensure the parents’ (and perhaps child’s) interests are represented – unless parents are pursuing asylum.
Protections for Juvenile Justice-involved Youth
Confidentiality of Juvenile Records

• CA law has long made “juvenile case files” confidential, except to certain excepted parties specified in Welf. & Inst. Code § 827(a)(1) & § 828

  • Everyone else must petition the court under § 827(a)(1)(P) in order to get access to juvenile records

  • Applies to juvenile case files, any portion thereof, and information relating to the content of the juvenile case file
California’s Juvenile Confidentiality Laws

- WIC § 831 makes clear that federal immigration officials cannot access or receive juvenile information without a court order
- Probation departments cannot lawfully share information about youth in their care with ICE
- Applies to information sharing with ICE in all contexts – keep in mind in cases dealing with detained parents
Delinquent Youth & Immigration Relief

- Delinquency doesn’t create a bar to immigration status (treated differently than adult convictions by immigration law)
- Some limited circumstances when conduct underlying delinquency can trigger immigration consequences
- Evidence of juvenile conduct will be used as a matter of discretion when applying for immigration status
- Many noncitizen children in delinquency system are eligible for immigration status!
III. Immigration Relief Options for Children & Families
Citizenship Status

• Is the child a U.S. citizen without knowing it?
  • If person is born outside the U.S., ask two threshold questions to see if they are a U.S. citizen

1. Was there a US citizen parent or grandparent at time of person’s birth? OR,
2. Before person’s 18th birthday, did both of these events happen (in either order)?
   a) S/he became a permanent resident, and
   b) at least one natural or adoptive (but not step-) parent having some form of custody over her/him is or becomes a U.S. citizen
Many undocumented minors are eligible to obtain legal status in the U.S.

• Special Immigrant Juvenile Status
• Violence Against Women Act (VAWA)
• U Visas for Victims of Crime
• T Visas for Victims of Trafficking
• Asylum
• DACA?
• Family Immigration and Adoption
Special Immigrant Juvenile Status

• Is the child currently under juvenile court jurisdiction where the court has ruled (or could rule) that the child:
  • cannot be reunified with one or both parents because of abuse, neglect or abandonment or a similar basis under state law; and
  • that it would not be in the child’s best interest to be returned to the home country?

• Investigate \textit{SIJS}
Special Immigrant Juvenile Status (SIJS) provides legal protection for certain undocumented immigrant youth who have been abused, abandoned, or neglected, allowing them to legalize their immigration status and get a green card.

How do you obtain it? A two or three step process:

- First step takes place in state court & remaining steps take place with USCIS or Immigration Court.

Unique hybrid of federal and state law - federal relief depends on initial findings by state court.
Important Points on SIJS

• Eligibility for long term foster care not a requirement

• Available to children who cannot be reunified with “one or both” parents

• If file SIJS with USCIS before 21, will not “age out”

• Currently a “visa backlog” for youth from Mexico, El Salvador, Guatemala & Honduras, meaning they will face a wait to get their green card (possibly years)

• Parents can never get immigration status through the child
Deferred Action for Childhood Arrivals (DACA)

- June 15, 2012: President Obama announced that the Dept. of Homeland Security would not deport certain undocumented youth who had come to the United States as children
  - 2 year period of work authorization + protection from deportation
  - **NOT** a path to permanent residency or citizenship
- President Trump promised to eliminate DACA, but has not done so at this time
Finding Competent Legal Services

- Immigrants have no constitutional right to appointed, free legal counsel
- To locate free and reduced cost immigration legal services in your area, visit:
  - Immigration Advocates Network: [http://www.immigrationadvocates.org/nonprofit/legaldirectory/](http://www.immigrationadvocates.org/nonprofit/legaldirectory/) or
- To check an attorney’s record, go to the State Bar
  - [http://members.calbar.ca.gov/fal/membersearch/quicksearch](http://members.calbar.ca.gov/fal/membersearch/quicksearch)
Resources

Family Preparedness Plan
• https://www.ilrc.org/family-preparedness-plan

Know Your Rights & What Immigrant Families Should Do Now
• https://www.ilrc.org/sites/default/files/resources/kyr_two_pager_v2.pdf

Reuniting Immigrant Families Act
• https://www.ilrc.org/reuniting-immigrant-families-act-sb-1064

Applying the ICE Parental Interests Directive
• https://www.ilrc.org/applying-ice-parental-interests-directive-child-welfare-cases

Immigrant Youth Resources
• https://www.ilrc.org/immigrant-youth
QUESTIONS or COMMENTS?

To submit live questions, click on the “Questions” panel, type your question, and click “Send”

or contact

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